THIRTEEN DECISIONS ARE MADE BY SUPREME COURT

Judges Reverse Roane County Tribunal in Lawrence Appeal Case.

Thirteen decisions were handed down this week by the West Virginia supreme court of appeals. Probably the most noted of the cases thus disposed of is that of Lawrence against Barlow, which has been occupying the attention of the courts of Roane county and the officials of the state hospital at Spencer for a long time. S. W. Lawrence, formerly a patient in that asylum, but out on bond for some time past, is the plaintiff and Charles A. Barlow, superintendent of the Spencer state hospital, the defendant. The circuit court of Roane county had held that the superintendent was entitled to his custody, but now the supreme court reverses the lower court, practically deciding on the evidence that the patient has recovered his sanity and is entitled to his full liberty under his habeas corpus proceedings.

The written opinion lays down the principle of law that any persons confined in such an institution, except in cases of crime, may be delivered over to any friend who will give bond and security properly executed; and if subsequently restored to sanity while in such custody, it is the duty of the official in charge of the hospital to discharge him from custody and give him a certificate of release, and that a writ of habeas is proper.

It is understood that Lawrence's wife was resisting his efforts for an unconditional release from the institution, on the plea of his dangerousness. He had been in asylums in other states and was in Weston hospital previous to his incarceration at Spencer. His home is in Tyler county.

The following decisions were handed down:

Judge Mason.

Gwinn against Gwinn, Summers county—Reversed and bill dismissed.

Lawrence against Barlow, Roane county—Reversed and petitioner released.

Judge Lynch.

McCreary against Railway Company, Greenbrier county—Reversed and new trial awarded.

Harper against Oil Company, Roane county—Reversed and remanded.

Judge Williams.

Railway Company against Coal Company, Upshur county—Judgment affirmed.

State against Merico, Tucker county—Judgment affirmed.

Judge Miller.

State against Moore, Tucker county—Decree reversed and entered here.

Burton against Coal Company, Mingo county—Judgment reversed and entered here.

Rose against O'Brien, Webster county—Writ of prohibition awarded.

Judge Poffenbarger.

Taylor against Campbell et al, Pocahontas county—Reversed.

Bartlett against Bank, Marion county—Affirmed.

Lumber Company against Turnbull, Webster county—Reversed and remanded.

State against Springer, Tucker county—Affirmed.

The following are the syllabi of the cases:

Gwinn et al v. Gwinn.

Summers county; reversed; bill dismissed; Mason, judge.

In the habendum clause of a deed is found this language: "To have and to hold aforesaid tracts or parcels of land with the appurtenances unto the said W. L. G., his heirs and assigns, forever with the express understanding that the said B. G. is to have the privilege of locating and keeping open a wagon road through said land," describing the route of the road. The said B. G. was not a party to the deed, and no such road existed at the time. Held: That this privilege to B. G. to locate and keep open this road is a limitation to the habendum clause to the extent only of conferring on B. G. a privilege to be exercised by himself, and is not a reservation by way of a reddendum clause.

A way of necessity exists where land granted is completely environed by land of the grantor, or partially by his land and the land of strangers. The law implies from these facts that a private right of way over the grantor's land was granted to the grantee as appurtenant to the estate.

Use of a private way from one's land of another for ten years with the acquiescence of the other will confer a right to such way, but, if the owner does not acquiesce therein, but denies the right of way, such use will not confer the right of way.

Lawrence v. Barlow, et al.

Roane county; judgment reversed and petitioner released; Mason, judge.

Any person confined in one of the hospitals for the insane, of this state, as an insane person, "except in the case of a person charged with crime and subjects to be tried therefor, or convicted of a crime and subject to be punished therefor, when in a condition to be so tried and punished," may be delivered to any friend who will give bond and security with the conditions mentioned in section 10, chapter 58 of the code of West Virginia. If such insane person shall be restored to sanity while in the custody of such bondsmen, it is the duty of the persons having control of such hospital to discharge him from such custody and give him a certificate thereof. If the person in charge of such hospital fail or refuse to release such person from custody, after reasonable demand, the writ of habeas corpus is a proper remedy to secure such release.

McCreary v. Chesapeake and Ohio Railway Company.

Greenbrier county; judgment reversed; new trial awarded; Lynch, judge.

When alleged as the basis for recovery in an action, negligence, or the facts and circumstances reasonably justifying an inference of negligence, must be proved like any other facts necessary to entitle plaintiff to a verdict and judgment in his favor.

In the absence of proof showing the acquisition of its railroad right of way by condemnation, negligence can not be imputed to a railroad company merely because of its failure to enclose such right of way.

Under the provisions of section 163, chapter 50, code, an appeal lies from the judgment of a justice, though defendant did not appear in response to the process served on him, except to ask for such appeal and tender the required bond therefor.

Harper et al v. South Penn Oil Company.

Roane county; decree reversed; cause remanded; Lynch, judge.

Where lessors in an oil and gas lease, covering 115 acres composed of three parcels conveyed by different grantors, executed sealed instruments purporting to assign all the delay rentals and oil and gas royalties reserved by them in productions from the leased premises under the terms of the lease, of the execution of which assignments they notified the lessee and thereby authorized it to pay all such rentals and royalties to such assignees, "reserving nothing" to themselves therein, and thereafter for several years, until the institution of this suit, the lessee pursuant to such authorization, paid and delivered the rentals and royalties as so directed (where with or without protest of the lessors or their subsequent assignees being immaterial), those holding under such assignments are necessary parties to bill by the lessors or those in privity with them, claiming adversely to such assignees, whereby they seek an adjudication limiting the oil and gas estates, so assigned, to one only of the several parcels constituting the 115 acres and an accounting as to all rentals and royalties chargeable to that particular tract.

Whenever, in a suit in equity, it appears that persons not parties to the litigation have direct interests in the subject matter involved, or that, in their absence the rights of the parties thereto prevented by an adjudication therein, the court ordinarily ought in such circumstances, when seasonably requested by parties to the cause, to require plaintiffs to convene such absent parties that justice may be done, performance of the decree rendered safe to those compelled to obey it, and further litigation in respect thereof thereby foreclosed.

Except when otherwise provided by statute, a decree to be appealable generally must adjudicate the questions raised in the cause by proper pleadings or otherwise, settle the principles on which relief is to be administered and leave nothing undetermined except the necessary application of such principles to the facts in the case in respect of the rights of the parties thereto in relation to the subject matter of the litigation. A mere expression of an opinion in an interlocutory order, stating reasons for rulings on exceptions on an answer, not replied to, and not purporting to settle all the principles of the cause, is not an appealable order.

This court will reverse a decree adjudicating the rights of persons not parties to the cause, when it is reasonably apparent they are prejudiced by such adjudication.

Coal and Coke Railway Company v. Buckhannon River Coal and Coke Company.

Upshur county; affirmed; Williams, judge.

A consignor who signs a bill of lading on his own account, and not as agent for the consignee, is liable to the carrier for the freight, although title to the goods passed to the consignee on delivery to the carrier

Neither the words, "Freight collect from consignee," written in the face of a bill of lading, nor a printed condition on the back thereof, stating "the owner or consignee shall pay the freight," are alone sufficient to relieve the consignor from liability. Such provisions are for the benefit of the carrier and do not constitute a special contract with the consignor.

The carrier does not, by waiving its lien and delivering the goods to the consignee before payment of freight, release the consignor from liability. In the absence of a special contract, both consignor and consignee who has accepted the goods, are liable to the carrier.

After a sale and delivery to the carrier by the consignor, the owner may reconsign the goods without releasing the consignor, provided his liability is not thereby increased.

The consignee's being under bond to the terminal carrier to pay the freight, does not affect the consignor's liability on his contract with the initial carrier for the joint freight charges.

State v. Merico.

Tucker county; affirmed; Williams, judge.

An indictment for unlawfully carrying a pistol without a state license is good notwithstanding it charges in a single count, that, at the same time defendant carried all the other weapons forbidden by the statute to be carried.

Although it is necessary, in such case, for the indictment to aver the want of a state license, the burden is on defendant to prove he had a license.

A person, to whom a pistol is given at his home, has no right, after changing his domicile, to carry it about his person from the place of gift to another domicile.

State v. Moore, et als.

Tucker county; decree reversed and entered here; Miller, judge.

In a suit by the state, pursuant to chapter 105, of the code, to sell for the benefit of the school fund land claimed by defendants, section 13, of said chapter, provides that the costs thereof as taxed by the clerk "shall be paid out of the proceeds of the sale of said real estate, and not otherwise," and the court has no jurisdiction where there has been no misconduct or abuse of the process of the court by defendants to adjudge such costs or any part thereof against them.

When the question of costs is not discretionary, but controlled by statute, as in this case, or by contract, as in some cases, and such costs are not merely incidental to the matter in controversy before the court, error in the judgment or decree may be corrected by motion, writ of error, bill or review, appeal or by any other appropriate process.

And where the state is plaintiff in such suit, and the erroneous judgment or decree is in its favor, the error may be so corrected notwithstanding the provision of section 36, of article 5, of the constitution, that the state shall never be made a defendant in any court of law or equity.

Burton v. War Eagle Coal Company.

Mingo county; judgment reversed and entered here; Miller, judge.

Where an adult miner, skilled and intelligent, sees, understands and appreciates that the place in which he is requested to work by another servant is dangerous and unsafe and that what he is requested to do will render the place continually more dangerous, if he elects to continue at work in such place he assumes all risk of personal injuries, precluding recovery therefor against the owner of the mine.

Nor will the promise of the owner, or of an unauthorized agent or coworker, to furnish props in a reasonable time, or to make or assist in making the place safe, excuse his negligence in remaining and working in such dangerous place, and give him right of action against the owner for consequential personal injuries.

Rose v. O'Brien, Judge, et als.

In prohibition; writ awarded; Miller, judge.

A defendant in an action before a justice cannot by filing a fictitious counter claim or set-off thereby raise the amount in controversy so as to bring the case within the appellate jurisdiction of the circuit court.

Where by filing such claim or set-off a defendant succeeds in obtaining an appeal from the judgment of a justice and on which he has offered no proof either before the justice or on the trial in the circuit court, and the fictitious character of such counter claim or set-off is so made to appear, the jurisdiction of the circuit court is thereby ousted, and the appeal should be dismissed as improvidently awarded.

In such a case the judgment of the circuit court adjudged costs against the plaintiff and appellee is absolutely void and enforcement thereof may be prohibited.

Bartlett v. Bank of Mannington.

Marion county; affirmed; Poffenbarger, president.

Money paid by one person on the debt of another, at his request, or by his procurement, may be recovered from him, in assumpsit on the common count for money paid, laid out and expended for his use and benefit and at his request, and the method or form of the transaction is immaterial, if it amounts to payment in law or is so treated by the creditor.

Errors in the rulings of the trial court upon the admission and rejection of evidence are deemed to have been waived, if they are not made grounds of the motion for a new trial nor subjects of special bills of exception, showing the evidence and the rulings of the court thereon.

To obtain a review of the action of the trial court, in refusing to give certain instruction at the instance of the complaining party, the record of the cause must show, by bills of exception or otherwise, what instructions were given at his instance, so as to enable the appellate court to determine whether any error has been committed in the rulings. In this instance, as in most others, there is a presumption in favor of the correctness of the rulings of the trial court, which prevails unless rebutted by the record.

A bill of exceptions, showing the giving of one instruction for the plaintiff and the refusal of five asked for by the defendant, without more, is deemed and held not to disclose all the rulings of the court upon the requests for instructions.

Judicial admissions made in one case are evidence in another, but are not conclusive, and the effect thereof may be avoided by proof of their having been made under a misapprehension of fact.

Issues dependent upon conflicting oral evidence and uncontrolled by any admitted or clearly established facts, fall within the province of the jury, and its finding thereon cannot be disturbed by the court.

One who has wrought injury to himself by a misrepresentation which caused another to do the injurious act is estopped from complaining of such act, in an action brought by such other person against him.

The time laid in a declaration in assumpsit, containing only the common counts, is immaterial and may be departed from in the proof.

Belle-Mead Lumber Company v. Turnbull.

Webster county; reversed; remanded; Poffenbarger, president.

The exercise by the employer, in a logging contract, of an optional right, after breach of the contract and notice to the employes and his surety in a bond of indemnity, to take charge of the work and all teams, tools, machinery, implements and appliances used therein, and complete it, "with as reasonable cost for same as possible," does not postpone his right of action on the bond indemnity, until completion of the work.

Postponement or limitation of the right of action does not arise by implication or inference, from the cause giving such right, the purpose of which was to enable the covenantee to get possession of the timber rights of way, tramways, engines, cars, tools, machinery and appliances and complete the work, as a means of preventing loss and delay in the execution of his purpose.

An implied covenant can be justified only on the ground of legal necessity. It is not enough merely to say fairness, prudence or wisdom demanded it under the circumstances. It must be necessary to the operation of the contract or of the words found in it, or to the effectuation of the intention of the parties, made manifest by their words.

State v. Springer.

Tucker county; affirmed; Poffenbarger, president.

A room in which the card game known as "poker" is habitually played and to which all persons who desire to play or watch the game, are admitted without invitation, and which they are at liberty so to enter, is a place of public resort within the meaning of the statute, making it a misdemeanor to play cards in any public place or place of public resort, notwithstanding inability of persons to witness or observe the game from any public road, street, railroad, store, shop or other place to which people in general resort for other purposes.

Taylor v. Campbell, Cooper and Company.

Pocahontas county; reversed; Poffenbarger, president.

After the dismissal of an appeal from the judgment of a justice of the peace, as having been improvidently awarded, the circuit court cannot enter a judgment against the surety in the appeal bond, for the amount of the judgment rendered by the justice, nor for any other amount. Owing to the dismissal of the appeal, there is no breach of the condition of the bond.

Peace and Preparedness Advocates Caricatured At Gridiron Club Dinner

President Wilson and Other Government Officials Are Among the Guests.

(BY ASSOCIATED PRESS)

WASHINGTON, Dec. 11.—Peace and preparedness advocates alike came in for a raking fire of jest at the winter dinner of the Gridiron club tonight. At the close the preparedness ranks appeared the stronger, but their casualties from verbal shrapnel were almost as heavy as those of the pacifists

President Attends.

President Wilson, Vice President Marshall, members of the cabinet, senators, representatives and men prominent in public life from many parts of the country were among the club's guests. The chorus of the song introducing the president follows:

We take our stand back of you, Mr. Wilson,
Strength to your arm we give;
You're the leader of all,
We respond to your call,
We will stand firm with you for the red, white and blue.

No party or faction divides us in twain
We're just plain Americans, proud of the name;
Let the world realize,
Naught can sever our ties,
We take our hats off to you.

A figure representing William Jenning Bryan was prominent in the evening's entertainment. He bobbed up in three skits, always in a stellar role.

"The Saccharine Soldier," perhaps the liveliest of all the sketches, brought the former secretary of state to the fore as the leader of a band of soldiers armed with marshmallows, bon bons and other candies, and exhibited as relics of a barbaric age. Among the officers were General Gumdrop, Colonel Caramel, Major Marshmallow, Captain Candy, and others bearing names of confections. The soldiers' "weapons" were huge red, white and blue candy canes, which they waved quite recklessly.

Chautauqua Contracts Stolen.

Announcement of the loss of all of the army's chewing gum to a girl's school and the destruction of two wagonloads of chautauqua contracts caused great distress in the camp. Mr. Bryan then obliged with "Good-bye, chief, I'm through." Here is the chorus:

Bood-bye, chief, I'm through,
I pray you'll not forget;
I say good-bye to you
Witn more or less regret;
I go to save the nation
With lecture and oration,
So I bid a fond adieu,
Good-bye, chief, God bless you,
I'm through.

As Mr. Bryan finished singing, General Gumdrop broke out into "In days of old, when knights were bold," and the entire company mutinied. The skit closed with the singing of a strictly preparedness chorus.

The Gridiron Rookies sketch then brought out Colonels Roosevelt, Harvey, Watterson and House, and Secretary Garrison, General Leonard Wood, Mayor John Purroy Mitchel of New York, Dudley Field Malone of New York, collector of customs; Representative Augustus P. Gardner, of Masachusetts; Oswald G. Villard, of New York, Mr. Bryan and Theodore Roosevelt, Jr., as candidates for the army. Scarcely had the squad assembled when Colonel Roosevelt leaped forward and began to assail those who are trying to "Chinafy America." As the examination for candidates proceeded, Colonel Roosevelt was asked if he desired to join the cavalry.

"I want to organize a gas bomb brigade," he replied.

"What do you know about gas bombs?" an examiner asked.

"Everything; why I fired one at Plattsburg."

"Did it do any damage?"

"It almost killed Leonard Wood."

Garrison's Idea of Hero.

Mr. Gardner, clad only in a shirt and a barrel, rushed in complaining that Secretaries Daniels and Garrison had stolen all of his outfit except his press agent. Secretary Garrison, under examination stated that his idea of a hero was a man who stood on the administration firing line and permitted Roosevelt to shoot speeches at him. Colonel Watterson declared his belief that preparedness just now is a good thing because it will demonstrate that a single track mind can run both ways. Colonel House was assigned to the household cavalry. Dudley Field Malone went to the Boy Scouts.

To prove that newspaper men in Washington are not handed information on a silver platter, "four exhibits of raw material" with whom the reporters have to work, Mr. Bryan, Secretary Redfield, Senator James Hamilton Lewis and Secretary Tumulty, were presented in a sketch. Mr. Bryan said he had much news but he was keeping it for his own paper. Secretary Redfield entered a general denial. Senator Lewis uttered many words, but not one for quotation. Secretary Tumulty confined himself to anecdotes without news value, chiefly concerning old days in New Jersey.

A cloture rule, designed to affect only Senators Reed, of Missouri, and Thomas, of Colorado, was quickly adopted 94 to 2, by a mock senate. A suffraget who appeared to investigate cloture fled when she heard that it limited talk. Cloture, which was represented by a human figure, eventually was "talked to death" and carried out. Vice President Marshall remarked, before adjourning the senate, that the body needed a plucking board instead of a cloture rule.

Besides the executive officers, Senators Cummins, Borah, Sherman, Penrose, James and Oliver; Representatives Cannon and Man, of Illinois; Gardner, of Massachusetts; Stevens, of Minnesota; Rear Admiral Benson, chief of naval operation, U. S. N.; Major General Scott, chief of staff, U. S. A.; Hiram Maxim, a member of the naval advisory board, and David Belasco, of New York, were among the widely known guests.

HALT DIVORCE FOR SAKE OF CHILDREN.

DENVER, Colo., Dec. 11.—Afraid that attorneys and court costs would leave them too poor to give their children a happy Christmas, Alfred Stromwall and his wife, Mrs. Hulda Stromwall, asked Judge Perry, of the district court, to dismiss their divorce case.

"We've decided to get along together until after Christmas, anyhow," said Mrs. Stromwall, leading her husband into court by the arm. "The children are already talking about the fun they're going to have. We just couldn't disappoint them."

The case has been pending for several weeks, and husband and wife have appeared frequently with denunciations of each other, but they came into court the last time with embarrassed smiles. Judge Perry granted their petition and wished them a merry Christmas and a happy New Year.

VOTERS TO MEET.

There will be a meeting of the voters of the Town of Broad Oaks, at the Council Chamber, Tuesday, December 14, 1915, at 8:00 o'clock p. m., to nominate a ticket of the Progressive party, to be voted on at the coming election, Thursday, January 6, 1916.

J. E. McNEMAR,
F. B. SNYDER.